IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 2990 of 2002

For Approval and Signature:

Hon'ble MR.JUSTICE C.K.BUCH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

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SHANTILAL DALCHAND CHANDEL

Versus

STATE OF GUJARAT

Appearance:

1. Special Civil Application No. 2990 of 2002

MR HR PRAJAPATI for Petitioner No. 1

MR MR PRAJAPATI for Petitioner No. 1

MR AY KOGJE Ld. AGP for Respondent No. 1-3

MS PJ DAVAWALA for Respondent No. 4

CORAM : MR.JUSTICE C.K.BUCH

Date of decision: 19/06/2002

ORAL JUDGEMENT

Heard Mr. HR Prajapati learned counsel for the petitioner and Mr. AY Kogje learned AGP for the respondents no. 1 to 3 and Ms. PJ Davawala for

respondent no. 4.

The affidavit filed by Mr. PG Vyas, Deputy Secretary, Food, Civil Supplies and Consumer Affairs Department, tendered today by Mr. AY Kogje learned AGP is taken on record.

The present petitioner is a detenu has filed this petition under Article 226 of the Constitution of India whereby he has challenged the legality and validity of the order of detention dated 3.2.2002, Annexure-A.

According to the detaining authority, the petitioner was required to be prevented from indulging in any criminal activities in any manner prejudicial to the maintenance of supplies of essential commodities like "KEROSENE (Blue)" essential to the community and therefore, the powers vested in the detaining authority vide sub-section 2(a) of Section 3 of The Prevention of Black Marketing and Maintenance of Supplies of Essential Commodity Act, 1980 has been exercised and the petitioner has been detained.

The petitioner has challenged the validity of the order on number of grounds but the learned counsel appearing for the petitioner Mr. Prajapati has mainly focussed on two grounds i.e. ground 4(m) and 4(s) of the memo of petition. It is submitted that the Sponsoring Authority has withheld very vital and important documents from the detaining authority and retracted the statement of one important witness Jagdish Chandra Pannalal Boriwal was not placed before the detaining authority. Undisputedly, the Investigating Officer has recorded the statement of this licence holder Jagdish Chandra Pannalal Boriwal involving the present petitioner but the immediate next statement on oath i.e. by way of affidavit was also with the Sponsoring Authority where this very Jagdish Chandra has said that the petitioner has not delivered the stock of Kerosene to him. It was obligatory for the Sponsoring Authority to place both the statements before the detaining authority. As all relevant documents were not fairly placed before the detaining authority, the subjective satisfaction recorded by the authority therefore suffers from vice of non-application of mind or improper application of mind. In support of his say, Mr. Prajapati has placed reliance on the decision in the case of V.C.Mohan vs. Union of India & Ors., reported in (2002)3 SCC p. 451 where the Apex Court has held that non-placement of relevant material before detaining authority by sponsoring authority renders the detention order illegal. In the

case before the Apex Court, the detenu was detained under the COFEPOSA Act, 1974 even than the Apex court has observed that the enormity of gravity of the alleged offence committed by the detenu is irrelevant. The ground (m) of the memo of petition is very clear and specific and the respondent especially the detaining authority could have filed affidavit to meet with the grievance expressed in the ground (m) of the petition.

All the three respondents have filed their affidavit-in-reply and two relevant affidavits i.e. the affidavit filed by the State of Gujarat and the detaining authority are silent and none of them have tried to meet with the allegations made in this ground (m). Absence of specific denial or convincing explanation, it shall have to be held that the ratio of the above cited decision of the Apex Court squarely applies to the facts of the present case.

The second ground- 4(s) mentioned in the memo of petition has been added subsequently as per the orders passed by this court on 4.4.2002 indicates that this is a case of solitary incident and though all relevant materials including the statement of Jagdish Chandra Pannalal Boriwal was available with the Sponsoring Authority on 11.10.2001 and the order of detention has been passed on 3.2.2002 i.e. at a belated stage. The non-explained delay in passing the order of detention also goes to the root of the validity of the order. It is rightly pointed out by Mr. Prajapati that the detaining authority has not explained the delay in passing the order of detention. It is not necessary to deal with other grounds on merits as this Court is satisfied with the order of detention is bad and it cannot sustain.

In the result, this petition is allowed. The impugned order of detention dated 3.2.2002 passed by District Magistrate, Surat is quashed and set aside. The detenu is ordered to be set at liberty forthwith, if he is not required to be detained in any other case. Rule is made absolute. DS permitted.

(C.K. BUCH, J.)

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